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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,144	12/29/2000	Peter Benda	9790350-0002	9215

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EXAMINER

JEANTY, ROMAIN

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 01/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/751,144

Applicant(s)

BENDA ET AL.

Examiner

Romain Jeanty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-42 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Restriction/Election

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-28, drawn to a method of optimizing a shipment of at least one product from a plurality of shippers having different entities, classified in class 705, subclass 7.
 - II. Claim 29, drawn to a system to optimize metric of products transported from a plurality of shippers to at least one receiver, classified in class 705, subclass 7.
 - III. Claim 30, drawn to a computer program embodied on a tangible medium to optimize shipment of merchandise on a vehicle by filling or substantially filling the vehicle, classified in class 705, subclass 7.
 - IV. Claim 31, drawn to a signal-bearing having machine-readable instruction, classified in class 705, subclass 7.
 - V. Claim 32, drawn to a signal-bearing having machine-readable instruction, classified in class 705, subclass 7.
 - VI. Claims 33-38, drawn to a server apparatus, classified in class 705, subclass 7.
 - VII. Claim 39, drawn to a method of optimizing a truck load capacity of products transported from at least one shipper to at least one receiver, classified in class 705, subclass 7.
 - VIII. Claim 40-42, drawn to a method of replenishing products of at least one distributor by shipments from at least one manufacturer, classified in class 705, subclass 7.

The inventions are distinct, each from the other because of the following reasons:

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1. Inventions I, II, III, IV, V, VI, VII and VIII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as optimizing the maximum load of at least one transport vehicles. See MPEP § 806.05(d).
2. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, III, IV, V, VI, VII and VIII, restriction for examination purposes as indicated is proper.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. A telephone call was made to Ronald e. Larson on January 13, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (703)308-9585. The examiner can normally be reached on Mon-Thurs 7:30 am - 6:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq R Hafiz can be reached on (703)305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-3900.


Romain Jeanty

January 13, 2003.